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C O N F I D E N T I A L SECTION 01 OF 03 TEL AVIV 000518

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NSC FOR ABRAMS/DANIN

E.O. 12958: DECL: 01/28/2015

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SUBJECT: GOI LAWYERS ON ABSENTEE PROPERTY LAW: HA'ARETZ

ARTICLE NOT THE WHOLE STORY

REF: JERUSALEM 299

Classified By: DCM Gene A. Cretz for Reasons 1.4 (b) and (d).

This cable has been cleared by ConGen Jerusalem.

¶1. (C) Summary: GOI lawyers from the Ministry of Foreign Affairs (MFA) and the Ministry of Justice (MOJ) told Deputy Economic Counselor on January 26 and 27 that recent changes to the Absentee Property Law (APL) are not aimed at large-scale expropriations of Palestinian land in East Jerusalem and are "not nefarious." They claimed the January 20 Ha'aretz article was incomplete and misleading, but the two lawyers gave different reasons for why this change to the APL took place now. Ehud Kanaan of the MFA said changes to the law began in 2003 as a "procedural" request by the Custodian of Absentee Properties because he found transactions under the APL relating to East Jerusalem to be burdensome. Mike Blass of the MOJ said the APL is being used as a legal instrument to seize land for construction of the separation barrier. The Ambassador has passed a list of questions to PM Advisor Shalom Tougerman to clarify GOI intentions in preparation for Dov Weissglas's meeting in Washington next week (see para 10). End Summary.

Press Stories Misleading

¶2. (C) GOI lawyers claimed to Deputy Economic Counselor January 26 and 27 that stories about new GOI land confiscations in East Jerusalem under the Absentee Property Law (APL) are incomplete and misleading. Foreign Affairs Ministry Legal Advisor Ehud Kanaan denied allegations in a January 20 Ha'aretz article claiming that changes in the APL were aimed at large-scale expropriations of Palestinian lands on the Jerusalem side of the separation barrier. Instead, the changes were the result of an appeal by the former Custodian for Absentee Properties to rationalize the system for authorizing transactions involving "absentee property" in East Jerusalem. Kanaan claimed that, far from attempting to separate Palestinians from their land, the GOI was currently working on procedures that would provide West Bankers special permits they could use to pass through the separation barrier to reach property on the other side.

¶3. (C) Deputy Attorney General Mike Blass emphasized that, although the APL gives the GOI extensive powers to seize land, the GOI has utilized this law over the past year only in a limited number of cases in East Jerusalem, and only in cases involving the separation barrier. Neither lawyer was surprised by the fallout over the APL decision. Kanaan claimed that he had argued last year against the decision as ill-considered in view of its bad optics and Blass said, "We Israelis are terrible at PR."

Changes in APL "Not Nefarious"

¶4. (C) Kanaan claimed that the decision to apply the APL to properties in East Jerusalem was the result of a "procedural" request by the last Custodian of Absentee Properties, Yeheskel Shamash. According to Kanaan's account, all transactions involving property in East Jerusalem declared absentee required the personal approval of the Custodian. Shamash found this burdensome and lobbied to have the law changed. This process began in 2003, Kanaan believed, and culminated in a decision "passed in minutes by a government committee, not the Cabinet" in the middle of 2004, referred to in a January 20 article in Ha'aretz and outlined in reftel. He also claimed that changes to the APL and its application were frequent in nature and generally unremarkable.

¶5. (C) In response to ECON/D's observation that this change in the law raised important questions about the nature of the separation barrier (Note: such as those raised in the Ha'aretz piece), particularly in and around Jerusalem, Kanaan said that, "although the timing of the change in the APL was clearly unfortunate, there was no nefarious purpose involved." He noted that he had himself argued against the change in the APL as being likely to be misinterpreted

internationally. He emphasized that the GOI was "very cautious" about actions relating to the separation barrier: "this is not a political fence."

Problems Accessing Land Lead to MoJ Recommendations

16. (C) Kanaan said the GOI was actively seeking to develop and finalize procedures that would allow Palestinians to access their land on the Jerusalem side of the fence. He said that the erection of the separation barrier had led to "a large number of Palestinians" raising access problems with the army, who had turned to the Justice Ministry for advice. Kanaan said the MoJ had developed a set of recommended procedures, which had been discussed in an interagency meeting a month and a half ago involving himself, the IDF, the Office of the Custodian of Absentee Properties, the PMO, the Finance Ministry, and others. The recommendations, Kanaan believed, were now with the Attorney General for decision and eventual forwarding to the "political echelon."

17. (C) Kanaan said the recommendations set up a procedure to establish whether a Palestinian had been using property in East Jerusalem and, if so, for how long. A West Bank farmer, would instance, would be required to show that he had been actively tending a set of fields over a period of time. The second part of the recommendations set up a permit system allowing such qualified Palestinians to continue using their property. Kanaan said that he hoped these new recommendations would be approved quickly, as the army was bound to face more and more access cases in the future. He did not say what the consequences would be for Palestinian landowners who failed to provide sufficient power of active land cultivation; however, Deputy Attorney Blass implied that these land could be confiscated under the APL.

"I Have Yet to See the APL Used to Seize Territory for New Neighborhoods"

18. (C) Deputy Attorney General Mike Blass gave a somewhat different account of the GOI's recent use of the APL in East Jerusalem. He noted that the law, passed in the 1950s, had applied to East Jerusalem as of 1967, when the GOI extended its legal regime over this territory. The GOI's active implementation of the law in this area had, however, been intermittent. Although he asserted it was used fairly regularly between 1977-1992, "numerous problems with the application of the law," had led the GOI to suspend its active application to East Jerusalem until construction of the separation barrier.

19. (C) Blass noted that the APL was just "one of a number of legal instruments," which could be used to seize land needed for the barrier. He claimed that the GOI shied away from utilizing its rights of eminent domain, because these implied a permanent seizure of land, whereas the orders for land required for barrier construction are "temporary in length, approximately three years." The long-term fate of any seized land, he added, depended on the future of the separation barrier. "Title has already been given back, or is in the process of being given back to property holders in the east side of Qalqilya, Baqa, and Hirbat Gebere" where the barrier routing has been changed. (Comment: Blass did not explain why APL confiscations, which are permanent and not subject to legal dispute, could be more appropriate for a temporary barrier than equally permanent eminent domain actions. End comment.)

Remaining Questions

110. (C) Questions for the GOI regarding the Absentee Property Law (APL):

1A. What is the intention of making these changes to the APL?
-Is it going to be a legal instrument to seize land for construction of the fence?
-If the barrier is being built for temporary security reasons, and not to permanently define boundaries, why use APL, which permanently takes property?

1B. If the APL is used to confiscate Palestinian land in East Jerusalem, how will you assure that it is a temporary measure?

1C. Who can approve absentee designation besides the Custodian for Absentee Properties?

1D. Are they planning to survey the land to determine if it is being used or if it is absentee?

1E. What legal recourse will the Palestinians have if their

land is designated as absentee?

Comment

¶11. (C) Although the contacts with whom we have spoken stressed the GOI's intention not to use the Absentee Property Law for large-scale seizures of Palestinian land in East Jerusalem, the mere fact that the law gives the GOI such broad powers is disturbing in and of itself. Also of concern, particularly in view of the new reality of the separation barrier, is the fact that the GOI is now using the criteria of whether a Palestinian regularly accesses property as a factor in determining whether to allow further access or even continued ownership. At the very least, the GOI has a responsibility to move forward as soon as possible with its new permit procedures and should reconsider active application of the APL to East Jerusalem. Embassy will follow up with the GOI on questions related to the changes in the APL such as who can now approve absentee designation besides the Custodian of Absentee Properties, and why the GOI is using the APL -- under which confiscations are permanent and unappealable -- to confiscate land to build a barrier that is purportedly a temporary security measure. End comment.

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KURTZER